

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:08 CR 439 RWS
) DDN
LeQUINTON TYMEL GIBBS, et al.,)
)
Defendants.)

**ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This action is before the court on the motions of defendant LeQuinton Tymel Gibbs to suppress evidence, (Doc. 25 oral motion), for discovery under Federal Rules of Evidence 404(b) and 609 (Doc. 40), and for disclosure of expert testimony (Doc. 41); and on the motion of the government for a determination of the admissibility of arguably suppressible evidence (Doc. 25 oral motion). These motions were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b). A hearing was held on December 2, 2008.

On the motions relating to whether government evidence should be suppressed, defendant Gibbs through counsel indicated that careful consideration had been given to whether he had a substantial basis for seeking the suppression of any arguably suppressible evidence. After careful analysis, defendant determined that he did not have such a basis for seeking suppression. Such evidence was admitted by defendant in the state court proceedings in the related case. Therefore, the undersigned will recommend that these motions be denied.

Regarding the defendant's motions for discovery, the government said it would provide the Rule 404(b) and the Rule 609 evidence not later than two weeks before trial. Defendant would bring to the court's attention any difficulty in trial preparation due to this disclosure date. On the motion for disclosure of expert testimony, the government agreed to provide that information not later than December 5, 2008.

For the reasons stated above,

IT IS HEREBY RECOMMENDED that the motion of defendant LeQuinton Tymel Gibbs to suppress evidence, (Doc. 25 oral motion) and the motion of the government for a determination of the admissibility of arguably suppressible evidence (Doc. 25 oral motion) be denied.

IT IS HEREBY ORDERED that the motion of defendant LeQuinton Tymel Gibbs for discovery under Federal Rules of Evidence 404(b) and 609 (Doc. 40) is sustained, in that the government shall provide said information to the defendant not later than two weeks before trial.

IT IS FURTHER ORDERED that the motion of defendant LeQuinton Tymel Gibbs for disclosure of expert testimony (Doc. 41) is sustained in that the government shall provide said information to the defendant not later than December 5, 2008.¹

The parties are advised that they have until close of business on December 17, 2008, to file documentary objections to this Order and Recommendation. The failure to file timely documentary objections may result in a waiver of the right to appeal issues of fact.

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on December 2, 2008.

¹At the hearing held on December 2, 2008, the court indicated it would deny this motion as moot. However, for consistency with the court's disposition of defendant's other motion for discovery, the court sustains the instant motion.